

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM	DOCKET NO. SPU-02-18 (SPU-02-19)
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PROPOSED DECISION AND ORDER

(Issued April 15, 2003)

APPEARANCES:

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MR. BRET A. DUBLINSKE, attorney at law, Dickinson, Mackaman, Tyler & Hagen, P.C., 1600 Hub Tower, 699 Walnut St., Des Moines, Iowa 50309-3986, appearing on behalf of LTDS.

MR. MICHAEL R. MAY, attorney at law, Iowa Association of Municipal Utilities, 1735 N.E. 70th Avenue, Ankeny, Iowa 50021-9353, appearing on behalf of the Iowa Association of Municipal Utilities.

MR. DONALD G. HENRY, attorney at law, Consumer Advocate Division of the Department of Justice, 310 Maple Street, Des Moines, Iowa 50319-0063, appearing on behalf of the Consumer Advocate Division of the Department of Justice.

STATEMENT OF THE CASE

On October 18, 2002, Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), filed a Petition for Suspension or Modification of Long-Term Local Number Portability¹ in the Hartley, Primghar, and Paullina, Iowa exchanges. The filing was assigned Docket No. SPU-02-18. Iowa Telecom also filed a similar petition for the Coon Rapids, Iowa exchange on the same date. This filing was assigned Docket No. SPU-02-19.

The Community Action Agency (TCA), which includes the Hartley, Primghar, and Paullina exchanges, among others, filed an Answer to the petition in Docket No. SPU-02-18 on November 6, 2002. The Coon Rapids Municipal Communications Utility (CRM CU) filed an Answer to the petition in Docket No. SPU-02-19 on November 6, 2002.

On December 6, 2002, the Utilities Board (Board) issued an order combining the two cases, docketing them for investigation as Docket No. SPU-02-18, and assigning them to the undersigned administrative law judge. A December 9, 2002, order granted intervenor status to TCA and CRM CU and set a procedural schedule.

A petition to Intervene was filed by the Iowa Association of Municipal Utilities (IAMU) on December 12, 2002, and was granted in an order issued December 18, 2002. A Petition to Intervene was filed by LTDS on January 3, 2003, and was granted in an order issued January 14, 2003.

¹ Number portability is the ability of a customer to keep his or her telephone number when changing from one local telephone company to another.

Direct testimony and exhibits were filed by Iowa Telecom on January 10, 2003. Testimony and exhibits were filed by CRMCU, TCA, and by LTDS, on January 21, 2003. An order requiring additional information to be filed by Iowa Telecom was issued January 22, 2003. Rebuttal testimony and exhibits were filed by Iowa Telecom on January 27, 2003. An exhibit and motion to strike were filed by Iowa Telecom on January 28, 2003. A response to the motion to strike was filed by LTDS on January 29, 2003, and a joinder in that response was filed by CRMCU and TCA on the same date.

A hearing in this case was held on January 30 and 31, 2003. As a preliminary matter, LTDS clarified that it was not requesting a ruling that Iowa Telecom should be required to provide long-term local number portability (LNP) in the LTDS exchanges in this docket. After hearing argument on the motion to strike from the parties, the undersigned denied the motion. As a part of the ruling on the motion to strike, the undersigned stated that whether or not Iowa Telecom should be required to provide long-term local number portability (LNP) in the LTDS exchanges was not an issue in the case, that the evidence submitted by LTDS would not be considered for that purpose, and no ruling on that issue would be made in this docket. Mr. James P. Larsen and Mr. Dennis R. Kilburg testified on behalf of Iowa Telecom. Mr. Chad Bishop, Mr. Lawrence Butler, Mr. Bradley Honold, Mr. John Kelley, Ms. Kristy McDermott, and Mr. Dennis L. Weber testified on behalf of CRMCU and TCA. Mr. David Magill testified on behalf of LTDS. All prefiled exhibits were admitted. In

addition, Iowa Telecom Exhibits 1–4, and CRMCU-TCA Exhibits 210–14 and 217-22, were admitted. At the request of the parties, and with the agreement of all parties, the briefing schedule was modified². Initial briefs were due no later than Friday, February 28, 2003, and reply briefs were due no later than Monday, March 10, 2003.

On February 14, 2003, Iowa Telecom filed additional information by Mr. Kilburg. On February 28, 2003, Iowa Telecom³, CRMCU and TCA, and LTDS filed initial briefs. The IAMU concurred with the brief of CRMCU and TCA. On March 10, 2003, Iowa Telecom and CRMCU and TCA filed reply briefs.

FEDERAL REGULATORY FRAMEWORK

The Telecommunications Act at 47 U.S.C. § 251(b)(2) provides that each local exchange carrier (LEC) has the duty to provide number portability in accordance with the requirements prescribed by the Federal Communications Commission (FCC), to the extent technically feasible. Number portability is defined as the ability of telephone customers to retain, at the same location, their existing telephone numbers "without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." 47 U.S.C. § 153 (30). 47 U.S.C. § 251(f)(2) provides that a local exchange carrier with fewer than two percent of the nation's

² The parties agreed that the 180-day time period for action by the state commission on the petitions contained in 47 U.S.C. § 251(f)(2) means that the undersigned must issue a proposed decision within 180 days of the filing of the petitions, not that the Board must issue a final decision within the 180-day time period.

³ Iowa Telecom is reminded that 199 IAC 7.7(12)"c" requires that arguments based on evidence introduced during the proceeding shall specify the portions of the record where the evidence is found.

subscriber lines may petition a state commission for a suspension or modification of the requirement to provide number portability under section 251(b)(2). Section 251(f)(2) further provides that the state commission shall grant such petition to the extent that, and for such duration as, it determines that the suspension or modification: (a) is necessary to avoid imposing a requirement that is unduly economically burdensome; and (b) is consistent with the public interest, convenience, and necessity⁴.

The FCC promulgated number portability rules at 47 C.F.R. §§ 52.20–52.33. The FCC rules distinguish between a long-term database method for number portability, which must meet certain performance criteria, and transitional number portability, which does not. 47 C.F.R. § 52.21. Transitional number portability methods include remote call forwarding. 47 C.F.R. § 52.21(q).

47 C.F.R. § 52.23(a) provides that, subject to paragraphs (b) and (c), all local exchange carriers (LECs) must provide number portability in compliance with the listed performance criteria. The performance criteria include, among other things: a) support of network services, features, and capabilities existing at the time number portability is implemented, including CLASS features; b) efficient use of numbering resources; and c) not requiring end users to change their telephone numbers. Paragraph 52.23(b) essentially requires LECs to provide a long-term database method for number portability in the 100 largest Metropolitan Statistical Areas (MSAs) by December 31, 1998. None of the areas at issue in this case are within the 100

⁴ The section contains other criteria not at issue in this case.

largest MSAs. Paragraph 52.23(c) requires all LECs, beginning January 1, 1999, to make a long-term database method for number portability available within six months after a specific request by another telecommunications carrier in areas where that telecommunications carrier is operating or plans to operate.

In this case, the parties referred to the long-term database method for number portability as used in the federal rules as long-term local number portability (LNP), and transitional number portability as used in the federal rules as interim number portability (INP). These terms will be used in this decision.

DISCUSSION OF THE EVIDENCE AND ANALYSIS

I. Background

CRM CU is a competitive local exchange carrier (CLEC) in the Coon Rapids exchange where Iowa Telecom is the incumbent local exchange carrier (ILEC). (Tr. 35). TCA is a CLEC in the Hartley, Paullina, and Primghar exchanges where Iowa Telecom is the ILEC. (Tr. 35).

CRM CU and Iowa Telecom have an approved interconnection agreement (by adoption of the GTE/South Slope interconnection agreement approved in Docket No. NIA-99-2) that includes terms for INP. (Tr. 35-37). Although the record is unclear, it appears that Iowa Telecom is providing INP at no cost to CRM CU. (Tr. 35, 404; Iowa Telecom Post-hearing Brief, p. 14; GTE/South Slope Interconnection Agreement Appendix D). When providing INP, Iowa Telecom pays CRM CU a flat monthly rate for terminating access of \$18.23 per month per business line, and \$9.01 per month

per residential line. (Tr. 160). The rate is the same for interstate and intrastate access. (Tr. 161).

Customers in the Coon Rapids exchange have had access to INP since CRMCU started providing local telephone service in 1999. (Tr. 350; 396). Witness Mr. Bradley Honold, general manager of CRMCU, testified that CRMCU had been aggressively marketing its system since 1999, and had been successful. (Tr. 350, 405). However, he testified there are a large number of customers who will not switch from Iowa Telecom to CRMCU because they do not want to change their telephone number. (Tr. 350-51, 398, 404-06). He testified that CRMCU had underestimated the resistance customers would have to changing their telephone numbers. (Tr. 351). He testified he had explained INP to the potential customers, explained that they could call forward their numbers, and the customers still do not want to switch. (Tr. 396-98, 404-06).

In the Coon Rapids exchange, Iowa Telecom has control of and issues telephone numbers with the "684" prefix, and CRMCU has control of and issues telephone numbers with the "999" prefix. (Tr. 351). If an Iowa Telecom customer wants to switch to CRMCU and keep its 684-1234 number, since only INP is available, CRMCU must issue a new telephone number of 999-1234 to the customer. (Tr. 352). CRMCU requests INP from Iowa Telecom for the 684-1234 number, and Iowa Telecom activates remote call forwarding on the 684-1234 number so that all incoming calls are forwarded to the 999-1234 number. (Tr. 352). All incoming calls

to the 684-1234 number go first to Iowa Telecom's switch and are then forwarded to CRMCU's network. (Tr. 352). The customer's outgoing calls are made using CRMCU's network and are sent out with the caller identification of 999-1234.

(Tr. 351). Therefore, Mr. Honold testified, it is not really true that INP allows a customer to retain his or her old telephone number when switching carriers.

(Tr. 396-399) Although the "684" number remains activated, the customer must also be assigned a new "999" number. (Id.) Witness Honold also testified that under INP, some custom local area signaling services (CLASS) calling features will not work because of the lack of SS7 trunking in Coon Rapids, and therefore CRMCU cannot offer services such as caller ID to customers switching from Iowa Telecom to CRMCU using INP. (Tr. 355, 397, 401-02).

TCA and Iowa Telecom have an approved interconnection agreement that is an adoption of the Iowa Telecom/Harlan Municipal Utilities interconnection agreement. (Tr. 35-36, 299; Exhibit DJW-1). That agreement does not contain terms for INP. (Tr. 39, 303) TCA's original business plan did not include number portability; rather, TCA requested that customers change to a new NXX when switching to TCA. (Exhibit JPL-5) However, according to TCA witness Mr. Dennis Weber, Iowa Telecom customers in TCA exchanges have told him they would like to switch services to TCA, but will not do so unless they can keep their existing Iowa Telecom numbers. (Tr. 302-03; Exhibits DJW-2). At this time, neither INP nor LNP is

available in the TCA exchanges. (Tr. 303). In 2002, Iowa Telecom proposed two interconnection agreement amendments for INP. (Tr. 40, 298; Exhibits JPL-6 and JPL-7). Neither proposal was acceptable to TCA. (Tr. 40-41, 298-99) Both proposals included monthly recurring and nonrecurring charges for INP. (Tr. 298; Exhibits JPL-6 and JPL-7). TCA witness Mr. Dennis Weber testified that Iowa Telecom agreed to waive all INP charges, but would not agree to provide access fee reimbursements acceptable to TCA. (Tr. 298-99). Negotiations for INP ended due to the failure to agree on an acceptable access fee reimbursement rate. (Tr. 40-41, 298-99).

During 2002, Iowa Telecom spent \$7,149.52 on an advertising campaign consisting of newspaper ads that said, among other things, "Stay with Iowa Telecom for your local telephone service and avoid the hassle of changing your telephone number." (Tr. 303, 356-57; Exhibit DJW-3; Exhibits 221, 222). Iowa Telecom ran the ads in a number of TCA exchanges also served by Iowa Telecom, including Hartley and Paullina. (Tr. 303; Exhibits 221, 22). Some of the exchanges in which Iowa Telecom ran the ads were LNP-capable. (Tr. 303; Exhibits 220 and 221)

On July 2, 2002, CRMCU submitted a bona fide request for LNP in the Coon Rapids exchange to Iowa Telecom. (Tr. 36; Exhibit JPL-1). On August 15, 2002, TCA submitted a bona fide request for LNP in the Hartley, Paullina, and Primghar exchanges to Iowa Telecom. (Tr. 36; Exhibit JPL-2).

Iowa Telecom responded to the CRMCU request in a letter dated July 29, 2002. (Tr. 37; Exhibit JPL-3). In the letter, Iowa Telecom stated the request imposed an unduly economically burdensome requirement on Iowa Telecom and represented an adverse economic impact on the users of Iowa Telecom's services. (Tr. 37; Exhibit JPL-3). It stated that Iowa Telecom had been providing INP via remote call forwarding, and this had been an acceptable alternative for the very few numbers ported out. (Exhibit JPL-3). Iowa Telecom stated it wished to continue with the current INP arrangement. (Exhibit JPL-3).

Iowa Telecom responded to the TCA request in a letter dated August 6, 2002. (Tr. 39; Exhibit JPL-4). Iowa Telecom stated the request imposed an unduly economically burdensome requirement on Iowa Telecom and represented an adverse economic impact on the users of Iowa Telecom's services. (Tr. 39; Exhibit JPL-4). Iowa Telecom also stated that the Iowa Telecom/TCA interconnection agreement did not contain provisions for INP, that it had proposed an amendment to include it, and had not received a response from TCA. (Exhibit JPL-4). Iowa Telecom stated it wished to continue with the proposed INP amendment and implementation and that it would negotiate the monthly charges. (Exhibit JPL-4). It stated that sharing of access charges was already addressed in the amendment. (Exhibit JPL-4).

Iowa Telecom then filed its petitions for suspension or modification of the LNP requirement on October 18, 2002.

It is uncontested that it is technically feasible for Iowa Telecom to provide LNP in the exchanges at issue in this case.

II. Whether Iowa Telecom meets the 2 percent test.

It is also uncontested that Iowa Telecom owns less than two percent of the nation's subscriber lines. (CRM CU and TCA Answers, p. 2; Tr. 32, 37; Iowa Telecom Initial Brief, p. 2 and Reply Brief, pp. 3-4; CRM CU/TCA Initial Brief, p. 3; LTDS Initial Brief, p. 2). However, LTDS argues that the Board should find that Iowa Telecom fails the 2 percent test because GTE owned more than 2 percent of the lines, and when Iowa Telecom purchased the assets of GTE, it "stepped into the shoes" of GTE. (LTDS Initial Brief, p. 2). CRM CU and TCA joined in this argument in their Reply Brief, pp. 1-2. LTDS argues that because GTE was required to provide LNP, Iowa Telecom should also be required to provide it, without regard to line counts. (LTDS Initial Brief, pp. 2-3). It argues that when Iowa Telecom purchased all of GTE's wireline local exchange assets in Iowa, it took assignment of GTE's interconnection agreements and other obligations, and "should be considered as having 'stepped into the shoes' of GTE – LNP obligations and all." (LTDS Initial Brief, p. 3). It further argues that Iowa Telecom promised to provide better services than GTE had provided when it was seeking Board approval for the sale in Docket No. SPU-99-29. (Id.) LTDS argues that LNP is a better service than INP, that GTE was providing LNP upon request, and Iowa Telecom would have to provide LNP to provide service as good as that of GTE. (Id.) LTDS further argues that Iowa

Telecom promised LTDS it would provide LNP in an effort to resolve concerns LTDS expressed in its petition to intervene in Docket No. SPU-99-29⁵. (LTDS Initial Brief, p. 4; Exhibit DM-09). It further argues that since Iowa Telecom promised to continue or improve services offered by GTE, a more than two percent carrier, and made specific promises to other carriers to provide LNP, that the undersigned should find that Iowa Telecom has waived its right to claim less than two percent status. (LTDS Initial Brief, p. 4).

Iowa Telecom argues there is no support for LTDS' position. (Iowa Telecom Reply Brief, p. 4). It argues that it took over and discharged the commitments made in the GTE sale, that it assumed the obligations of GTE as set forth in its purchase agreement and not the status of GTE, and there is no statutory support for LTDS' position. (Id.) Iowa Telecom argues that it has improved service, and nothing about its representation to improve service constituted a representation that it would provide permanent number portability. (Id.) It argues that Iowa Telecom's promise in Exhibit DM-09 was a commitment to provide LNP "in accordance with the obligations and procedures established by the applicable federal and state law," and this

⁵ Exhibit DM-09 is a Letter Agreement regarding GTE Midwest, Inc. and Iowa Telecommunications Services, Inc., Iowa Utilities Board Docket No. SPU-99-29, dated March 28, 2000, signed by Iowa Telecom and LTDS. In the agreement, Iowa Telecom stated "In an effort to resolve the concerns your companies (CLECs) have raised in their Petitions to Intervene filed in the above Iowa Utilities Board Docket, ITS has agreed to make certain binding commitments. Specifically, ITS commits and agrees as follows: ... ITS will develop, test and have in place prior to closing the procedures for offering local number portability (LNP) where requested, in accordance with the obligations and procedures established by the applicable federal and state law, including but not limited to the Telecommunications Act of 1996 and the rules of the Iowa Utilities Board." The Letter Agreement further states "Based on these commitments and assurances by ITS, the CLECs commit to withdraw

proceeding is under the provisions of § 251(f) of the Telecommunications Act, and is fully compliant with federal law. (Iowa Telecom Reply Brief, p. 5). It argues that there is no basis upon which to conclude anything other than Iowa Telecom has less than 2 percent of the lines and is qualified to seek suspension or modification of § 251(b) or (c) requirements where appropriate.

Although LTDS could reasonably conclude from the Letter Agreement, Exhibit DM-09, that Iowa Telecom had made a commitment to it to provide LNP where requested, and Iowa Telecom's argument that it had not is unpersuasive given the language in Exhibit DM-09, this does not provide a basis for a finding that Iowa Telecom does not meet the statutory qualification of owning less than 2 percent of the nation's subscriber lines. The commitment made by Iowa Telecom in Docket No. SPU-99-29 to improve service if the Board allowed it to purchase the assets of GTE also does not provide such a basis, whether or not Iowa Telecom has improved service. Section 251(f)(2) does not contain a waiver provision, and it does not contain a provision that a carrier with less than 2 percent of the subscriber lines that purchases a carrier with greater than 2 percent of the subscriber lines "steps into the shoes" of such carrier. The section 251(f)(2) test is a simple qualification: whether the LEC owns fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide. Iowa Telecom owns less than 2 percent of the lines. It therefore meets the qualification, and may petition the Board for suspension or

modification of the requirement to provide LNP within six months of receipt of a request to provide it.

III. Whether granting the petitions is necessary to avoid imposing a requirement that is unduly economically burdensome.

A. Iowa Telecom's position.

Iowa Telecom states that only six numbers are ported out from Iowa Telecom to CRMCU using INP, and that 24 numbers are remote call forwarded by Iowa Telecom to a number referral service that tells the caller the customer's number has changed to the CRMCU number. (Tr. 37-38). Iowa Telecom further states that 50 percent of the access lines and customers in the Coon Rapids community have switched to CRMCU, and all of these customers have been assigned CRMCU numbers. (Tr. 38-39). When these customers use CRMCU numbers, portability is not required. (Tr. 39).

Iowa Telecom states that TCA originally informed it that number portability was not needed, and once TCA requested it, Iowa Telecom indicated its willingness to negotiate an INP amendment to the Iowa Telecom/TCA interconnection agreement to incorporate terms and conditions for INP. (Tr. 39-40).

Iowa Telecom states that the municipals acknowledge that the Board must consider the full economic burden on it to provide LNP, including both direct and indirect costs. (Iowa Telecom Reply Brief, pp. 5-6). It states that the Coon Rapids switch is not SS7 capable, and Nortel's estimate for implementation of LNP in the Coon Rapids complex is \$43,528. (Tr. 60). This amount includes the \$30,000 cost

of making the Coon Rapids switch SS7-capable. (Exhibit JPL-9). It estimates that it would receive \$21,470 in SPNP revenues and \$19,250 in advanced services revenues over the next five years, leaving a shortfall of \$2,808. (Exhibit JPL-8).

Iowa Telecom states that it would incur costs of \$147,850 to implement LNP in the Hartley complex. (Exhibit JPL-8). It estimated SPNP revenues would provide \$83,588, leaving an estimated shortfall of \$64,262. (Exhibit JPL-8).

Iowa Telecom states that since preparing its original estimate, it has lost 202 access lines in the CRMCU and TCA complexes, and therefore its estimate of SPNP revenue will be \$4,363.00 less than originally estimated for the two complexes.

(Tr. 62)

Iowa Telecom states that it has developed a network improvement plan that reduces the number of host switches in Iowa from 83 to 10. (Tr. 252-53). It states that within the plan there are no plans to relocate any DMS-10 switches to other locations where they would operate as a host-switching office. (Tr. 251). Both the Coon Rapids and Hartley switches would become remote switches under the network improvement plan. (Tr. 251, 254). Under the plan, Rockwell City will serve as the host switch for the Hartley, Primghar, and Paullina exchanges, and Audubon will serve as the host for Coon Rapids. (Tr. 251; Exhibit 4). Iowa Telecom argues that if the Board requires it to provide LNP capability in Coon Rapids at the present time, the SS7 and LNP functionality of the Coon Rapids switch would not be used at another location, and the expenditure would be wasted. (Tr. 251).

Iowa Telecom further states that its current 2003 capital budget will be spent entirely on projects related to maintaining the network and delivering required service levels to customers. (Tr. 251; Iowa Telecom Reply Brief, p. 7). It states that the budget includes minimal dollars for projects related to regulatory mandates and CLEC interconnection activity. (Tr. 251). Iowa Telecom witness Mr. Kilburg testified the 2003 capital budget does not include any dollars for discretionary capital projects. (Tr. 252; Iowa Telecom Reply Brief, p. 7). As a result, he testified, there is no funding for major switching upgrades, technology enhancements such as SS7, or discretionary upgrades of outside plant facilities. (Tr. 252; Iowa Telecom Reply Brief, p. 7). Iowa Telecom states that it filed a rate proceeding, Docket No. RPU-02-4, to seek additional revenues to pursue its network improvement plan. (Tr. 252). The Board denied the request, and unless that decision is modified, Iowa Telecom states that it will simply not have adequate funds to make the capital improvements needed to bring advanced telecommunications services to its Iowa customers. (Iowa Telecom Post-Hearing Brief, p. 6).

Iowa Telecom argues that the municipalities' argument that the cost to provide LNP in any particular exchange is an exceedingly small percentage of the total operating costs, while true, is irrelevant. (Iowa Telecom Reply Brief, p. 7). It argues the company's expenses are already committed to its operations, and the costs for LNP must come from additional revenues or at the expense of other projects that

have a greater benefit to a significant number of Iowa Telecom customers. (Iowa Telecom Reply Brief, p. 7).

Iowa Telecom states that under the network improvement plan, LNP software will be available in all the host switches, and will accommodate requests for LNP from any remote exchanges served by the hosts. (Tr. 253). It states this significantly reduces the cost to implement LNP on a statewide basis due to the reduced number of host switches where LNP software must be installed. (Tr. 253).

Iowa Telecom argues that in deciding whether LNP implementation is "unduly economically burdensome," the Board should take into account the importance of LNP in these exchanges, the burden on Iowa Telecom to implement LNP, and the limitations on Iowa Telecom's resources. (Iowa Telecom Post-Hearing Brief, p. 8). It further argues the Board must employ a balancing test to determine whether the imposition of these costs is appropriate under the facts and circumstances of the case at this time. (Iowa Telecom Reply Brief, p. 6). It argues these include the network upgrades needed, the cost of the upgrades, the business needs of the requesting carrier, and the timetable for deployment of a long-term number portability method. (Iowa Telecom Reply Brief, p. 6). Iowa Telecom argues that the demands for LNP are unduly economically burdensome for Iowa Telecom to invest funds that are not available, for a level of service not necessary at this point, and for upgrades that will be wasted as Iowa Telecom implements its network improvement plan. (Iowa Telecom Reply Brief, p. 6). It further argues that the statute and rules

mandated LNP in the top 100 markets in the country but required it to be deployed in the smaller rural markets only upon demand, and that the states were given the authority to review the particular facts and circumstances in these cases. (Iowa Telecom Reply Brief, pp. 6-7).

Iowa Telecom argues that LNP is of limited importance and would provide limited benefits in the Coon Rapids and Hartley exchanges at this time. (Iowa Telecom Post-Hearing Brief, p. 9). It argues that both CRMCU and TCA have been successfully competing without LNP, and both companies' business plans originally did not include LNP and contemplated that customers would change their telephone numbers. (Iowa Telecom Post-Hearing Brief, p. 9). It argues that both companies have been highly successful using this business plan, with CRMCU achieving a market share far exceeding 50 percent. (Iowa Telecom Post-Hearing Brief, p. 9). Iowa Telecom argues that obviously, LNP was not necessary for both to compete effectively. (Iowa Telecom Post-Hearing Brief, p. 9).

Iowa Telecom further argues that the importance of LNP is significantly reduced by the availability of INP. (Iowa Telecom Post-Hearing Brief, p. 9). It argues that INP provides a low-cost solution for those customers who want to retain their current telephone numbers. (Iowa Telecom Post-Hearing Brief, p. 9). It argues that the evidence shows the municipalities' concerns that INP is not an adequate solution because calls are routed over Iowa Telecom's "antiquated and unreliable" network and lose some CLASS features such as caller ID are not justified. (Iowa Telecom

Post-Hearing Brief, p. 9). It argues that Iowa Telecom's system is not antiquated. (Id.) Iowa Telecom witness Mr. Kilburg testified the Coon Rapids network uses fiber optic facilities for interexchange transport, and the Northern Telecom DSM-10 switching platform is digital technology capable of providing high quality service for both local and toll calls. (Tr. 248-49). He testified that the Hartley host office, which also supports the remote switching in Paullina and Primghar, is equipped with fully functional SS7 capability, and the switches provide fully functional CLASS services. (Tr. 249). Iowa Telecom further argues that its system is not unreliable, and the switches serving these exchanges did not experience a recordable central office equipment outage in 2002. (Iowa Telecom Post-Hearing Brief, p. 10). It states that the two outages identified by TCA were caused by a Qwest fiber optic cable being cut and a Qwest power outage, neither of which resulted from any failure of Iowa Telecom's system. (Tr. 55).

Iowa Telecom further argues that the claimed deficiencies of INP are overstated by the municipalities. (Iowa Telecom Post-Hearing Brief, p. 10). It argues that in the TCA exchanges, CLASS features are fully functional between Iowa Telecom and TCA when using INP. (Iowa Telecom Post-Hearing Brief, p. 10). Iowa Telecom argues that in Coon Rapids, some CLASS features such as caller ID could be impacted by the lack of SS7 capabilities, but the evidence shows there are other factors that impact such features, such as the originating caller's switch may not be SS7-capable or the originating caller may choose to block CNNID data. (Iowa

Telecom Post-Hearing Brief, p. 10). Iowa Telecom argues that viewing the evidence in total, INP is a very viable alternative to LNP in these exchanges. (Iowa Telecom Post-Hearing Brief, p. 10).

Iowa Telecom argues the marginal importance of LNP is demonstrated by the low number of customers who have requested INP. (Iowa Telecom Post-Hearing Brief, p. 10). It argues only a handful of Iowa Telecom customers transferring to CRMCU have requested or employed INP (only six customers currently use INP). (Iowa Telecom Post-Hearing Brief, p. 10). Iowa Telecom argues that apparently the issue has been so insignificant in the TCA exchanges that TCA has not explored the INP option until recently. (Iowa Telecom Post-Hearing Brief, p. 10).

Iowa Telecom argues that in contrast to the limited benefit and importance of LNP, implementation would place a heavy economic burden on Iowa Telecom. (Iowa Telecom Post-Hearing Brief, p. 11). It argues that it would have to incur over \$67,000 of nonrecoverable costs to implement LNP in these exchanges. (Iowa Telecom Post-Hearing Brief, p. 11; Exhibit JPL-8). It argues that the costs of implementation include both direct and indirect costs because they reflect the true economic burden imposed on Iowa Telecom. (Exhibit JPL-9; Iowa Telecom Post-Hearing Brief, p. 11, and Reply Brief, pp. 5-6). It argues that it would be forced to incur up front costs of approximately \$163,803, and capital dollars are not available for those costs. (Exhibit JPL-9 exclusive of overheads; Tr. 252; Iowa Telecom Post-Hearing Brief, p. 11, and Reply Brief, pp. 7-8). Iowa Telecom argues that the dollars

would have to be diverted from other higher priority projects adversely impacting a greater number of Iowa Telecom customers. (Tr. 220, 227, 263; Iowa Telecom Post-Hearing Brief, p. 11, and Reply Brief, p. 7).

Iowa Telecom argues those expenditures would have no long-term benefit because the Coon Rapids and Hartley host switches will become remote switches under the network improvement plan, and any capital investment to provide LNP would be lost. (Tr. 251, 267; Exhibit 4; Iowa Telecom Post-Hearing Brief, p. 11, and Reply Brief, p. 8). It further argues that under the network improvement plan, LNP will be available through the host switching offices, and this plan significantly reduces the cost to implement LNP statewide. (Tr. 253; Iowa Telecom Post-Hearing Brief, p. 11). It argues that implementing LNP on a piecemeal basis inconsistent with the overall network improvement plan would be wasteful and cause an undue economic burden on Iowa Telecom. (Iowa Telecom Post-Hearing Brief, pp. 11-12).

Iowa Telecom argues that although the municipals allege Mr. Larsen admitted the net cost of \$2,808 for Coon Rapids is not economically burdensome, that amount is not the sole impact on Iowa Telecom. (Iowa Telecom Reply Brief, p. 7). Iowa Telecom would have to invest over \$43,000 in Coon Rapids, the SPNP fee could only be charged over a five-year period, and due to competitive restraints, the SPNP fee cannot be charged at all. (Iowa Telecom Reply Brief, p. 8).

It further argues that the \$319,822 it spent in 2001 for LNP was primarily to fulfill responsibilities committed to by GTE, part of that amount was paid by GTE, and

the rate request filed by Iowa Telecom was about the inability of Iowa Telecom to fund discretionary capital expenditures that it had previously been making. (Iowa Telecom Reply Brief, p. 8). It argues that the company must review every capital expenditure carefully. (Tr. 252; Iowa Telecom Reply Brief, p. 8).

Iowa Telecom argues that the SPNP fee is not chargeable as a practical matter, because the only place it applies would be in competitive exchanges, and adding the surcharge to the company rates would make the company less competitive in those exchanges. (Tr. 137; Iowa Telecom Reply Brief, p. 8). It argues that the SPNP fee can only recover the direct costs of LNP, and increasing the charge would be a useless act because it cannot be collected due to the competitive implications. (Iowa Telecom Reply Brief, p. 8).

Iowa Telecom argues that in Docket No. RPU-02-4, the Board made it clear that Iowa Telecom's current financial problems are of its own making, and LTDS' reference to this makes it clear that the Iowa Telecom arguments of financial burden are in fact credible. (Iowa Telecom Reply Brief, p. 9). It argues that the limited ability of Iowa Telecom to make capital investments is not really an issue. (Iowa Telecom Reply Brief, p. 9).

Iowa Telecom argues that the undue economic burden test must be viewed in a balancing of the benefits and burdens. (Iowa Telecom Reply Brief, p. 9). It argues it would have to incur a cost of over \$43,000 in Coon Rapids, and over \$147,000 for the TCA exchanges, and these amounts would be wasted, as the exchanges

become remotes. (Iowa Telecom Reply Brief, p. 9). It argues since Iowa Telecom does not have available funds with which to make these investments, they would have to come at the expense of other projects that are of higher priority to the overall customer base of Iowa Telecom and necessary to maintain and operate the network. (Iowa Telecom Reply Brief, p. 9). It further argues LNP is of very limited benefit, because the key concern expressed by the customers of these CLECs is to be able to retain their telephone numbers, and INP provides an acceptable solution to meet the needs of these customers. (Iowa Telecom Reply Brief, pp 9-10).

Iowa Telecom argues that the marketing strategy evidenced on Exhibit DJW-3 has nothing to do with the failure of Iowa Telecom to provide LNP. (Iowa Telecom Reply Brief, p. 12). It argues that TCA's marketing strategy required customers to change their telephone number, and the advertising campaign was addressed to that strategy. (Iowa Telecom Reply Brief, p. 12).

B. CRMCU's and TCA's (the municipals') position.

The municipals argue that Iowa Telecom has not proven that suspension or modification of the LNP requirement is necessary to avoid a significant adverse economic impact on users⁶, and has not proven that suspension or modification is necessary to avoid imposing a requirement that is unduly economically burdensome. (CRMCU/TCA Post Hearing Brief, pp. 3, 5, 8-9, and Reply Brief, pp. 3-4). They

⁶ Iowa Telecom only argued the undue economic burden test under 47 U.S.C. § 251(f)(2)(A)(ii), not the significant adverse economic impact on users of telecommunications services generally under 47 U.S.C. § 251(f)(2)(A)(i). Iowa Telecom Petitions, Post Hearing Brief, and Reply Brief.

argue that Iowa Telecom has already too long delayed the deployment of facilities needed to provide LNP. (CRMCU/TCA Post Hearing Brief, p. 5). They further argue that the key issue in this case is not whether Iowa Telecom has shown it is entitled to an exemption from the Congressional mandate, but whether it has shown it is entitled to a suspension or modification of its duty to provide LNP. (CRMCU/TCA Reply Brief, p. 1). They further argue that it is Iowa Telecom's duty to make LNP available now, this is the policy adopted by Congress, and although some carriers may postpone LNP implementation, none may avoid it. (CRMCU/TCA Reply Brief, p. 1).

The municipals state it appears the Board must consider the full economic burden (both direct and indirect costs) on Iowa Telecom of providing LNP when it determines whether a suspension or modification is necessary to avoid imposing a requirement that is unduly economically burdensome. (CRMCU/TCA Post Hearing Brief, pp. 6-7, 23-24). They argue that the burdensome nature must still be unduly burdensome. (CRMCU/TCA Post Hearing Brief, p. 7). They argue that it is reasonable to conclude that in the context of this case, "unduly economically burdensome" is a cost that is excessive, oppressive, or unjustified.

The municipals argue that although it is undisputed that the SPNP fee is an additional charge on Iowa Telecom's customers, it is not a significant adverse economic impact on users of telecommunications services generally. (CRMCU/TCA Post Hearing Brief, p. 9). They argue that if Iowa Telecom were to charge its

customers the SPNP fee, the increase would amount to only \$0.36 per line per month for residential and business customers, \$3.24 per PBX trunk per month, and \$1.80 per ISDN arrangement per month. (Tr. 44; CRMCU/TCA Post Hearing Brief, p. 10). They argue these amounts are too small to have a significant adverse economic impact. (CRMCU/TCA Reply Brief, p. 2).

The municipals further argue that Iowa Telecom has not shown that suspension or modification of the obligation to provide LNP is necessary to avoid imposing a requirement that is unduly economically burdensome. (CRMCU/TCA Post Hearing Brief, p. 10, and Reply Brief, pp. 2-3). They argue that Iowa Telecom's position is that merely because it has not planned for the cost of providing LNP, any amount of money it would cost to provide LNP is unduly economically burdensome. (Tr. 47, 229-232; CRMCU/TCA Post Hearing Brief, p. 11). They state that Iowa Telecom's contention that it should not be forced to provide LNP unless it has budgeted the cost for doing so and implementation of LNP in these exchanges is at the top of its priority list is not sufficient. (CRMCU/TCA Post Hearing Brief, p. 11). They argue that the correct priority is that established by Congress, to provide LNP, not the priority established by Iowa Telecom in its business plan. (CRMCU/TCA Post Hearing Brief, p. 11). They argue that Iowa Telecom must show that a suspension is necessary to avoid imposing an unduly economically burdensome requirement, and the business plans of Iowa Telecom that call for spending money somewhere else do not establish an undue economic burden. (CRMCU/TCA Post Hearing Brief, p. 12).

They argue that Iowa Telecom has not produced evidence that establishes its right to an exemption, and the evidence shows the request is without merit. (CRM CU/TCA Post Hearing Brief, p. 12).

The municipalities point out that Iowa Telecom witness Mr. Larsen originally testified that the capital investment for LNP in the Coon Rapids exchange was approximately \$115,000. (Tr. 42; CRM CU/TCA Post Hearing Brief, p. 12). They further point out that in rebuttal testimony, Mr. Larsen disclosed that the original estimate was based on a quotation Iowa Telecom had received for its Guthrie Center exchange, and that the corrected amount for Coon Rapids was \$43,528. (Tr. 60; CRM CU/TCA Post Hearing Brief, p. 12). The municipalities note that Iowa Telecom did not obtain an actual estimate for the cost of providing LNP in the Coon Rapids exchange until more than three months after it filed its petition. (CRM CU/TCA Post Hearing Brief, p. 12). They further state that two days prior to hearing, pursuant to order, Iowa Telecom filed Exhibit JPL-9 that disclosed Iowa Telecom would incur only \$7,203 in costs directly related to providing LNP in Coon Rapids. (CRM CU/TCA Post Hearing Brief, p. 12). The municipalities further state that Iowa Telecom would be able to recover approximately \$21,470 in SPNP fee revenue over the five-year assessment period. (Tr. 45; CRM CU/TCA Post Hearing Brief, p. 13). They state that Mr. Larsen initially testified that imposition of the SPNP fee in Coon Rapids would allow Iowa Telecom to recover only 18 percent of its capital investment necessary to provide LNP, and this was subsequently shown to be wrong. (Tr. 45; JPL-9;

CRM CU/TCA Post Hearing Brief, p. 13). The municipalities argue that the revenue generated by the SPNP fee in Coon Rapids would exceed Iowa Telecom's costs directly related to providing LNP in that exchange, and such recovery is not an economic burden at all, let alone an undue economic burden. (CRM CU/TCA Post Hearing Brief, p. 13).

The municipalities further argue that in response to a data request, Iowa Telecom stated that its cost to provide LNP in the Coon Rapids exchange represented 0.09 percent of its total operating costs for the last fiscal year. (Tr. 67; Exhibit 210; CRM CU/TCA Post Hearing Brief, p. 13). They state that this percentage was based on the original cost estimate of \$115,000. (Tr. 67; CRM CU/TCA Post Hearing Brief, p. 13). They argue that Iowa Telecom's cost to provide LNP in the Coon Rapids exchange, whether the total capital investment of \$43,528 or the direct cost of \$7,203 is considered, is less than one third of its initial estimate of the percentage of its total operating costs for the prior fiscal year (which was less than one tenth of one percent). (CRM CU/TCA Post Hearing Brief, p. 13).

They argue that clearly, the costs associated with providing LNP to Coon Rapids are not an unduly economically burdensome requirement on Iowa Telecom. (CRM CU/TCA Post Hearing Brief, p. 13). The municipalities argue that Mr. Larsen admitted this in his hearing testimony at pages 219-220. (CRM CU/TCA Post Hearing Brief, p. 13). The municipalities argue that none of these costs are excessive or unreasonable within the meaning of the statute, they are not expenses outside the

pale of reason, and the comparatively small expense to provide a service that Congress mandated does not justify denial of LNP. (CRM CU/TCA Post Hearing Brief, p. 14).

With respect to the TCA exchanges, the municipals note that Mr. Larsen originally testified that the capital investment necessary to make those exchanges LNP-capable was approximately \$150,000, and that he also testified Iowa Telecom would incur a monthly recurring expense totaling \$132,600 over the five-year period the SPNP fee could be assessed. (Tr. 43, 46; CRM CU/TCA Post Hearing Brief, p. 14). They note that in rebuttal testimony, Mr. Larsen admitted the recurring expense should not have been considered in this proceeding because it related to the SS7 network that is already in place in Hartley. (Tr. 60-61; CRM CU/TCA Post Hearing Brief, p. 14). The municipals state that in Exhibit JPL-9, Iowa Telecom disclosed it would incur only \$126,600 in costs directly related to providing LNP in the Hartley complex. (CRM CU/TCA Post Hearing Brief, p. 14). The municipals state that Iowa Telecom's evidence showed that assessment of the SPNP fee in the Hartley complex would generate approximately \$83,588 in revenue over the five-year assessment period. (Tr. 46; CRM CU/TCA Post Hearing Brief, p. 14). They argue that when the anticipated SPNP revenue of \$83,588 is deducted from the \$126,600 costs directly related to providing LNP in the Hartley complex, Iowa Telecom's net cost to provide LNP in the Hartley complex is only \$43,012. (CRM CU/TCA Post Hearing Brief, p. 15). They further argue that even if the \$21,250 indirect costs are

added, Iowa Telecom's net cost is only \$64,262. (CRM CU/TCA Post Hearing Brief, p. 15). The municipalities argue that although Mr. Larsen testified this amount was an unduly economically burdensome requirement on Iowa Telecom, it is difficult to imagine that Congress envisioned such an insignificant amount would necessitate a suspension or modification of an ILEC's obligation to provide LNP. (Tr. 220; CRM CU/TCA Post Hearing Brief, p. 15).

They argue that witness Larsen's original testimony that imposition of the SPNP fee would enable Iowa Telecom to recover only 55 percent of its capital investment to provide LNP in the Hartley complex was shown to be wrong, and the SPNP revenue would actually represent 66 percent of Iowa Telecom's costs directly related to providing LNP in the Hartley exchanges. (Tr. 46; Exhibit JPL-9; CRM CU/TCA Post Hearing Brief, pp. 14-15).

The municipalities state that in response to a data request, Iowa Telecom stated that its cost to provide LNP in the Hartley complex represented 0.12 percent of its total operating costs for the last fiscal year. (Exhibit 217; Tr. 88; CRM CU/TCA Post Hearing Brief, p. 15). They state that this percentage was based on the initial cost estimate, and accordingly, whether the total capital investment of \$147,850 or the direct cost of \$126,600 is considered, Iowa Telecom's cost of providing LNP to Hartley, Primghar, and Paullina is less than its 0.12 percent estimate of total operating costs. (CRM CU/TCA Post Hearing Brief, p. 15).

CRM CU and TCA argue that Iowa Telecom has completely failed to show how an expense of less than one-tenth of one percent of its operating cost is unduly economically burdensome. (CRM CU/TCA Reply Brief, p. 2). They argue that the fact Iowa Telecom has made other budget decisions is not an economic burden. (CRM CU/TCA Reply Brief, p. 2). They further argue LNP is not a discretionary function; it is a mandate of federal law. (CRM CU/TCA Reply Brief, p. 2).

The municipals further argue that in 2001, Iowa Telecom spent \$319,822 for network improvements necessary to provide LNP in the Stacyville, St. Ansgar, Belle Plaine, Marengo, and Columbus Junction exchanges, and that expenditure was not an undue economic burden on Iowa Telecom. (Tr. 449-450; CRM CU/TCA Post Hearing Brief, p. 16). They acknowledge that Mr. Kilburg testified that a portion of this expenditure may have been made by GTE, but he did not offer a precise figure. (Tr. 454; CRM CU/TCA Post Hearing Brief, p. 16). The municipals argue that why Iowa Telecom now argues that spending less money to provide LNP in the Hartley, Paullina, and Primghar exchanges is an undue economic burden is a mystery not addressed in the evidence. (CRM CU/TCA Post Hearing Brief, p. 16).

They further argue that Iowa Telecom has never established the cost (direct or indirect), and that whatever the costs are, they are minimal compared to Iowa Telecom's operating costs and de minimis compared to the benefits of LNP in light of the Congressional mandate in favor of LNP. (CRM CU/TCA Post Hearing Brief, p. 16). They argue that none of the costs are excessive or unreasonable within the

meaning of the law, they are not unduly economically burdensome expenses outside the pale of reason, and the comparatively small expense to provide a service Congress mandated does not justify denial of LNP. (CRM CU/TCA Post Hearing Brief, pp. 16, 23). They further argue that regardless of whether direct or all costs are considered, they are insignificant, and are not an undue economic burden. (CRM CU/TCA Post Hearing Brief, pp. 23-24).

Although the municipals included the following arguments in the discussion of the public interest issue, they will also be included here because Iowa Telecom included the corresponding arguments in its discussion of the undue economic burden issue. The municipals state that Iowa Telecom makes much of the fact that a relatively small number of customers currently have their numbers ported to CRM CU. (Tr. 222-23; CRM CU/TCA Post Hearing Brief, p. 16). The municipals argue that this argument is misplaced, because there is not any particular percentage of telecommunications users that must request LNP from their CLEC in order to justify the requirement that an ILEC provide LNP. (CRM CU/TCA Post Hearing Brief, p. 16). They argue that Congress recognized the inability of customers to retain their telephone numbers when changing local service providers hampered the development of local competition, and therefore included the requirement that all LECs, both incumbents and new entrants, provide number portability in the Telecommunications Act. (CRM CU/TCA Post Hearing Brief, pp. 18-20). They argue that witnesses from the public testified to the concerns expressed by Congress when

it required LNP: that they do not have a viable choice of provider until LNP is available. (CRM CU/TCA Post Hearing Brief, pp. 21-22). They argue that Garth Seed, an important business in Coon Rapids, will not even consider CRM CU until it can provide LNP. (Tr. 354; CRM CU/TCA Post Hearing Brief, p. 22). They argue that Iowa Telecom's attempt to bolster its claim that LNP is not important and would not be a benefit in either exchange by stating that only three numbers have been ported out in the Coon Rapids exchange is contrary to both the evidence that there are people who would like the option to have LNP, and to the Congressional finding that LNP is so important that it is a mandatory feature of a competitive telephone system. (CRM CU/TCA Reply Brief, pp. 2-3).

They further argue that what is shown by the small number of customers using INP is that INP is not a viable alternative and not acceptable to telephone users. (CRM CU/TCA Reply Brief, p. 3). They argue that Congress did not find INP to be a viable alternative, and neither did the witnesses who were not employees of any party. (CRM CU/TCA Reply Brief, p. 3).

The municipals state that Iowa Telecom also contends that because INP will enable a customer to retain his or her current telephone number, there is no need for LNP. (CRM CU/TCA Post Hearing Brief, p. 16). They argue that INP, which in this case is remote call forwarding, is an unacceptable substitute for LNP because advanced CLASS services are lost when calls are forwarded from Iowa Telecom's antiquated network to CRM CU and TCA. (CRM CU/TCA Post Hearing Brief, p. 20).

They state that all CLASS services are only available in SS7-capable exchanges, and when a telecommunications user located outside the Coon Rapids exchange calls a CRMCU customer who receives INP from Iowa Telecom, the CRMCU customer is unable to enjoy the benefits of CLASS services because calling party data is stripped from the call by Iowa Telecom's network. (CRMCU/TCA Post Hearing Brief, pp. 20-21).

The municipals argue that Iowa Telecom has used its own failure to provide LNP to its advantage as a marketing tool in the TCA exchanges. (CRMCU/TCA Post Hearing Brief, p. 22). They further argue that they cannot avoid commenting on the hubris of the Iowa Telecom claim that LNP is not necessary for them to compete when Iowa Telecom used the lack of LNP in TCA as a cornerstone for an advertising campaign to encourage people not to take TCA service. (CRMCU/TCA Reply Brief, p. 3).

The municipals argue that Iowa Telecom's complaint that it will be placed at a competitive disadvantage by the SPNP fee was rejected by the FCC in its Third Report and Order In the Matter of Telephone Number Portability, FCC 98-82, CC Docket No. 95-116, RM 8535, (Released May 12, 1998) (Third Report and Order) at ¶ 59. (CRMCU/TCA Reply Brief, p. 3). The municipals further argue that Iowa Telecom's characterization of spending for LNP as discretionary is a mischaracterization, because LNP is mandatory. (CRMCU/TCA Reply Brief, p. 3).

The municipals state that Iowa Telecom's position that the suspension of the LNP requirement should last so long as it has not budgeted for the changes is telling. (CRM CU/TCA Reply Brief, pp. 3-4). They argue how long that will be is uncertain at best. (CRM CU/TCA Reply Brief, p. 4). They argue Iowa Telecom witness Mr. Kilburg testified Iowa Telecom has no intention of voluntarily providing LNP either this year or next, and would not commit to providing LNP in 2005, six years after the mandatory date for LNP. (CRM CU/TCA Reply Brief, p. 4; Tr. 462). They argue that Mr. Kilburg testified even if the Board modifies its decision in Docket No. RPU-02-4, LNP might not be accomplished in 2004. (CRM CU/TCA Reply Brief, p. 4; Tr. 464). They argue he also testified that at the moment, Iowa Telecom does not intend to provide LNP for another six or seven years. (CRM CU/TCA Reply Brief, p. 4, Tr. 465). The municipals argue this can hardly be viewed as a good faith effort by Iowa Telecom to abide by its duties under federal law, and even the six or seven year delay was not an absolute commitment. (CRM CU/TCA Reply Brief, p. 4). The municipals argue that Iowa Telecom's argument that it is entitled to an indefinite suspension confuses suspension with exemption, there is no exemption in the statute, and Iowa Telecom is not entitled to an exemption. (CRM CU/TCA Reply Brief, p. 4).

The Iowa Association of Municipal Utilities concurs with the CRM CU/TCA initial brief. (IAMU Concurrence).

C. LTDS' position.

LTDS argues that when Congress passed the Telecommunications Act, it was understood that the inability of customers to keep their existing numbers would be a significant barrier to competition. (LTDS Initial Brief, p. 1). Accordingly, LTDS argues, Congress required all local exchange carriers to provide LNP. (LTDS Initial Brief, p. 1). It argues that this is the default, the expectation, and exceptions should be granted only narrowly. (LTDS Initial Brief, pp. 1, 5). LTDS argues that this issue is important to the competitive environment, and the legal tests that Iowa Telecom must prove should be read narrowly. (LTDS Initial Brief, p. 1).

LTDS argues there is no evidence in the record that providing LNP would be unduly economically burdensome to Iowa Telecom. (LTDS Initial Brief, pp. 4-10) It argues that theoretically, any expenditure of money is economically burdensome, and the real test is the word "unduly." (LTDS Initial Brief, p. 5). It argues that the term implies something more than a normal economic burden; something that is unusual, excessive, or extraordinary. (LTDS Initial Brief, p. 5). LTDS argues that the cost of implementing LNP cannot automatically be considered economically burdensome because that would render the term "unduly" meaningless and severely undermine the default condition that LNP would be provided. (LTDS Initial Brief, p. 5). LTDS suggests that relevant factors to be considered in determining whether a burden is undue could include the magnitude of the cost, how foreseeable the cost was and how much lead time was available, what benefits should be balanced against the

burdens, and what steps a party has made to mitigate the economic burden. (LTDS Initial Brief, p. 5).

LTDS argues that Iowa Telecom's evidence continually changes with regard to the cost of providing LNP. (LTDS Initial Brief, pp. 5-6). It argues that Iowa Telecom filed for a waiver prior to receiving a quote for the cost of LNP in Coon Rapids, no witness could explain why Iowa Telecom was not charging the SPNP fee in any of its exchanges, Iowa Telecom made no effort to seek an increase in the SPNP fee before seeking a waiver, and the Board found in RPU-02-4 that Iowa Telecom had not made any effort to seek additional funding from investors for its operations. (LTDS Initial Brief, p. 6). LTDS argues that Iowa Telecom should be forced to explore the SPNP fee and other funding options before attempting to balance its budget on the backs of its competitors, and this waiver request is premature. (LTDS Initial Brief, p. 6).

LTDS further argues that although Iowa Telecom is entitled to recover SPNP fees in a number of exchanges, it is not assessing the fee in any of them. (LTDS Initial Brief, p. 7). It further argues that Iowa Telecom bases its projected shortfall on the SPNP fees it inherited from GTE, and could likely raise the fee. (LTDS Initial Brief, p. 7). LTDS argues that whether or not they could raise the fee, it is inexcusable that Iowa Telecom would stifle the rights of a competitor by seeking waivers without exploring this option. (LTDS Initial Brief, pp. 7-8). LTDS argues there would be no economic burden, undue or otherwise, with a slight increase in the

SPNP fee or if Iowa Telecom had been collecting it where eligible. (LTDS Initial Brief, p. 8).

LTDS further argues that the economic impacts fall far short of the excessive or extraordinary level required for a waiver. (LTDS Initial Brief, p. 6) It argues that Iowa Telecom witness Larsen conceded that the five-year economic shortfall in Coon Rapids was not unduly burdensome. ((LTDS Initial Brief, p. 6; Tr. 219). LTDS argues that the FCC found that indirect costs should not be considered in cost recovery in its Third Report and Order on Number Portability, ¶¶ 72-74. (LTDS Initial Brief, p. 7). LTDS argues that providing LNP in Coon Rapids results not in a shortfall, but in a surplus of recovery. (LTDS Initial Brief, p. 7; Exhibit JPL-8). LTDS argues that if the direct costs of \$7,203 are considered, Iowa Telecom would receive a profit of \$33,517. (LTDS Initial Brief, p. 7; Exhibit JPL-9). It further argues that when the direct costs of providing LNP in the TCA exchanges are considered, the five-year shortfall is only \$43,012, or about \$8,600 per year. (LTDS Initial Brief, p. 7). It argues that the "burden" of providing LNP in the Coon Rapids and Hartley exchanges is .09 percent and .12 percent of total annual operating costs, respectively. (LTDS Initial Brief, p. 7; Exhibits 210 and 217). It argues that when only direct costs are considered, these already miniscule numbers become even smaller. (LTDS Initial Brief, p. 7).

LTDS argues that the Board should not reward Iowa Telecom for "self-inflicting" an economic burden by choosing not to budget for the legal rights of other

carriers. (LTDS Initial Brief, p. 8). It argues that Iowa Telecom's witness Larsen claimed that any amount of expense was unduly burdensome because it was not included in the budget. (LTDS Initial Brief, p. 8; Tr. 230-31). LTDS argues that the anti-competitive nature of this argument is appalling, that "Iowa Telecom believes it can determine what legal rights its competitors do and - in the case of LNP - do not have by its unilateral act of not funding those rights." (LTDS Initial Brief, p. 8).

LTDS argues that Iowa Telecom has spent nearly \$320,000 on LNP in the past three years, and it is hard to see how it can refuse to spend a much smaller amount to meet current bona fide requests. (LTDS Initial Brief, pp. 8-9). It argues that Iowa Telecom spent as much running negative advertising about the number portability issue as it would cost to provide LNP in Coon Rapids. (LTDS Initial Brief, p. 9). It argues that the alleged shortfall in the Hartley complex is only \$8,600 per year, only slightly more than the one-year cost of Iowa Telecom's negative advertising. (LTDS Initial Brief, p. 9). LTDS argues that if Iowa Telecom can find the money to run such improper advertising, it should be forced to find the money to meet its legal obligations to competitors and the competitive market. (LTDS Initial Brief, p. 9).

LTDS argues that Iowa Telecom's claims of poverty are not credible in light of their ability to find the resources to litigate against competitors, spend money on false and negative advertising, and to fund their own growth. (LTDS Initial Brief, p. 9). It argues Iowa Telecom's credibility is also called into question by its ever-changing

cost projections for LNP and its failure to charge or explore raising the SPNP fee. (LTDS Initial Brief, p. 9). LTDS further argues Iowa Telecom's current financial problems are of its own making, and that the Board found in the decision in Docket No. RPU-02-4, p. 20-21, that the consequences of those problems should not be shifted to other captive entities. (LTDS Initial Brief, p. 9). It argues that for the same reasons, competitors seeking the benefits of LNP should not suffer the consequences of any financial problems of Iowa Telecom. (LTDS Initial Brief, p. 9).

LTDS argues that even if Iowa Telecom's costs are correct, and even if there is no increase in the SPNP fee, the cost of providing LNP is about \$8,600 per year over five years in the Hartley complex and is nonexistent or a profit in Coon Rapids. (LTDS Initial Brief, pp. 9-10). It argues that balanced against the size of Iowa Telecom, the foreseeability and years of warning Iowa Telecom had, the benefits of LNP, and Iowa Telecom's ability to spend nearly as much on negative advertising, this is barely an economic burden at all, much less an undue one. (LTDS Initial Brief, p. 10).

D. Analysis

1. INP versus LNP

An initial question that must be analyzed is whether INP is actually an adequate substitute for LNP in the Coon Rapids and TCA exchanges.

a. How INP and LNP calls are routed.

Under INP, an incoming local call of a CRMCU customer is remote call forwarded across the interconnection trunks between Iowa Telecom's switch and the municipal utility switch located in Sergeant Bluff. (Tr. 346, 352, 362). The call terminates to a second phone number assigned by the municipal utility to the municipal utility's customer. (Tr. 124, 352).

Under LNP, an incoming local call for a CRMCU customer also would be routed across the interconnection trunks between Iowa Telecom's switch and the municipal utility switch. (Tr. 124-25). However, under LNP, the ownership of the customer's phone number has changed, and the customer's original phone number is assigned in the municipal utility switch. (Tr. 124-25). Thus, unlike INP, the call is not terminated to a second phone number in the municipal utility switch. (Tr. 124-25).

Under both INP and LNP, toll calls are routed to a regional database to determine the ownership of the phone number. (Tr. 125). There is a ten-digit number, or local routing number, assigned to a local provider specific switch. (Tr. 125). This routes an incoming toll call to either Iowa Telecom's switch or the municipal utility switch, depending on which company owns the number. (Tr. 125-26). In the case of an incoming toll call to a number Iowa Telecom has ported using INP, the call would route to Iowa Telecom's switch. (Tr. 127). It would then be remote call forwarded across interconnection trunks to the municipal utility switch and then terminate to the municipal utility's customer. (Tr. 127). In the case

of an incoming toll call to a number that Iowa Telecom has ported using LNP, the call would route directly to the municipal switch where it would terminate to the municipal customer. (Tr. 128).

Under INP, all outgoing calls from a CRMCU customer are made from CRMCU's network and are sent out with the caller identification of the new "999" number. (Tr. 352). Under LNP, the customer is not assigned a new number at all, so outgoing calls are sent out with the caller identification of the old number. (Tr. 124-25).

b. Differences between INP and LNP from a utility perspective.

INP becomes available to a municipal utility subject to 47 U.S.C. 251-252 negotiations with Iowa Telecom. (Tr. 56). INP would require an amendment to the interconnection agreement between Iowa Telecom and TCA. In two proposed amendments to the TCA interconnection agreement, Iowa Telecom provided that the costs to implement INP would have been borne by the municipal utility. (Ex. JPL-6&7). However, after negotiating, Iowa Telecom agreed to provide INP to TCA at no charge. (Tr. 158, 298). That is the current arrangement between Iowa Telecom and CRMCU. (Tr. 158).

LNP becomes available to a municipal utility through its submission of a bona fide request to Iowa Telecom. (Tr. 298; Exhibits JPL-1&2). Iowa Telecom's total cost to provide LNP in the Coon Rapids exchange would be \$43,528, of which \$7,203 is directly related to providing LNP. (Exhibit JPL-9). \$30,000 of the cost would be for

changes necessary to make the Iowa Telecom switch SS7-capable, which is a necessary requirement for LNP. (Tr. 166; Exhibit JPL-9). \$6,325 of the cost is for Iowa Telecom overheads. (Exhibit JPL-9; Tr. 241-42).

Iowa Telecom's total cost to provide LNP in the Hartley exchange would be \$147,850, of which \$126,600 is directly related to providing LNP. (Exhibit JPL-9). The remaining \$21,250 is for Iowa Telecom overheads. (Exhibit JPL-9; Tr. 241-42). The Iowa Telecom switch in the TCA complex is already SS7-capable, so there are no additional costs for this, and no revenue from the sale of advanced services is shown. (Tr. 114; Exhibit JPL-8).

The costs to implement LNP could be partially borne by Iowa Telecom's customers in the form of a federally tariffed SPNP fee, and in the case of Coon Rapids, by the sale of advanced (CLASS) services. (Tr. 44; Exhibit JPL-8). Iowa Telecom estimates its five-year revenues from SPNP fees in the Coon Rapids complex to be \$21,470, and estimates revenues for five years for sales of advanced services to be \$19,250, leaving a total shortfall of \$2,808. (Exhibit JPL-8). Iowa Telecom estimates its five-year revenues from SPNP fees in the TCA complex to be \$83,588, leaving a shortfall of \$64,262. (Exhibit JPL-8). However, Iowa Telecom has chosen not to assess the SPNP fees even where it could do so, arguing that they are anticompetitive. (Tr. 137; Iowa Telecom Reply Brief, p. 8).

Under INP, incoming toll calls to municipal customers first flow across Iowa Telecom's switch. (Tr. 352). Under the terms of an interconnection agreement, Iowa

Telecom and the municipal utility would share the terminating access revenues. (Tr. 156, Exhibits JPL-6 and JPL-7, p. F-2). Because toll calls would also flow across Pioneer's switch in Sergeant Bluff, the municipal utility would also share access revenues with Pioneer as a part of its service agreement. (Tr. 344, 368). Thus, under INP, there is a three-way sharing of terminating access revenues by the municipals. (Tr. 344-45). Under LNP, toll calls to municipal customers do not flow across Iowa Telecom's switch. (Tr. 128). Thus, under LNP, terminating access revenues would not be shared with Iowa Telecom. (Tr. 353).

Finally, INP requires more than twice the numbering resources of LNP. (Tr. 425-26). Under INP, each customer has two telephone numbers. (Tr. 352, 425-26). This requires the competitive utility to apply for a full 10,000 number block in each town it provides service. (Tr. 425-26). This would not be necessary under LNP with number pooling. (Tr. 425-26).

c. Differences between INP and LNP from a customer perspective.

In its Third Report and Order, the FCC described a competitive local exchange scenario without long-term number portability that is similar to this case involving Iowa Telecom and the municipal competitors. The FCC noted that when a "customer changes local telephone companies and receives service at the same location from a different telephone company providing service from a different switch, the customer's new local telephone company typically must assign the customer a new seven-digit number." Third Report and Order, ¶ 11. In that situation, if a number is ported by INP

using call forwarding, the customer's former carrier forwards the customer's calls to the customer's new carrier enabling people to continue reaching the customer at the original number. Third Report and Order, ¶ 5. That approach, however, requires two telephone numbers for each customer who changes carriers. Third Report and Order, ¶ 5. To ensure a more efficient use of telephone numbers, the FCC in its First Report and Order⁷, required carriers to develop and implement a long-term solution that does not use two telephone numbers for each customer. Third Report and Order, ¶ 5.

The FCC acknowledged the value customers place on retaining their telephone numbers, and stated that business customers in particular may be reluctant to incur the administrative, marketing, and good will costs associated with changing telephone numbers. Third Report and Order, ¶ 4.

The municipal utilities also indicated that Iowa Telecom customers resist changing telephone companies if they cannot keep their original telephone number. (Tr. 173-77, 350-51, 389-90). These potential municipal customers are aware that in other areas customers may choose an alternative service provider and keep their original phone number. (Tr. 331). However, since INP is not available in the TCA exchanges, if an Iowa Telecom customer were to take service with TCA, the customer would need to change telephone numbers, and in the Coon Rapids exchange, would have to be assigned a second number, which would be used for all

⁷ In the Matter of Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-286, CC Docket No. 95-116, RM 8535 (Released July 2, 1996)

outgoing calls. (Tr. 397, 399). Under INP, the Caller ID number that goes out is the new number. (Tr. 352, 399, 419).

LTDS noted two additional problems customers may experience because of the use of two telephone numbers under INP. The fact that outgoing calls are displayed on Caller ID screens showing the customer's new telephone number instead of the old familiar phone number is a problem for stockbrokerage firms and banks, and it has prevented LTDS from obtaining at least one customer. (Tr. 419). Second, customers must file the new telephone number with their long distance carriers. (Tr. 419-20). This often delays the start of service for a week or more adding additional complexity to the change of service (Tr. 419-20).

The potential municipal customers may not fully perceive that both the original phone number and the new phone number would continue to function under INP. (Tr. 173, 185-87). There is also a perception of the potential municipal customers that reliability would be reduced because two companies are providing the service. (Tr. 174, 396).

Both Iowa Telecom and the municipal utilities agree that when calls are ported via INP by a non-SS7 capable switch, CLASS features will not function. (Tr. 209, 397, 445). An SS7-capable switch refers to the hardware and software necessary to support telephone transmission and switching on the network, and it is a prerequisite to LNP. (Tr. 192). CLASS features refer to a category of modern telephone services that telephone customers may reasonably expect to be available.

(Tr. 192). CLASS features include caller name, caller ID, customer-originated trace, and remote call forwarding. (Tr. 206-07). Iowa Telecom's Coon Rapids switch is non-SS7 capable. (Tr. 445). Therefore, the CLASS features will not function between Iowa Telecom's exchange and the Coon Rapids municipal exchange. (Tr. 445).

Since Iowa Telecom's Hartley switch is SS7-capable, under INP, Iowa Telecom's engineers believe that CLASS features would function, although extensive testing on this has not been completed. (Tr. 445).

The CRMCU and TCA switch located in Sargeant Bluff is SS7-capable and LNP-capable. (Tr. 331). Therefore, if LNP were available in Coon Rapids, all calls would route through that switch and not through Iowa Telecom's non-SS7 capable switch, and CLASS features would be available. (Tr. 196, 331). This is because the SS7-capable municipal switch would carry all the necessary data without modification or blockage. (Tr. 196).

d. INP is not an adequate substitute for LNP.

Therefore, although INP allows the customer to retain his or her telephone number for incoming calls, which is one of the major functions of LNP, INP is not an adequate long-term solution or substitute for LNP. This is particularly true in the Coon Rapids exchange where the lack of SS7-capability in the Iowa Telecom switch means that CLASS services are not available. Although Iowa Telecom argues there are other factors that may mean CLASS features do not function, the major reason

CLASS features are not available is due to the Iowa Telecom switch in Coon Rapids.
(Tr. 105, 196, 209)

2. Economic Burden

Iowa Telecom has not presented sufficient evidence to show that providing LNP in the Coon Rapids and TCA exchanges would be unduly economically burdensome, particularly if it is given a reasonable time to comply in the TCA exchanges. The undersigned agrees that in assessing whether this test has been met, both direct and indirect expenses should be considered. The discussion by the FCC categorizing costs as direct or indirect in the Third Report and Order does not specifically relate to the unduly economically burdensome requirement in the statute, and Iowa Telecom will have to incur the costs to implement LNP.

However, the fact that Iowa Telecom chooses not to assess the SPNP fee does not mean that the revenues from those fees should not be considered in assessing undue economic hardship. The SPNP fee is available to Iowa Telecom as a federally-approved source of revenue if it chooses to assess it. Iowa Telecom's argument that the fee is anticompetitive is not particularly persuasive. First, the fee is only \$0.36 per business or residential line per month, \$3.24 per PBX trunk per month, and \$1.80 per ISDN arrangement per month. (Tr. 44). This is not an amount that is so great it would clearly cause customers to switch carriers. In addition, Iowa Telecom's decision to forebear collection because it believes customers may or will switch is a competitive choice the company has made, but it does not mean the

potential revenue is not available, and it does not mean the revenue should not be considered in assessing undue economic hardship.

After considering the direct and indirect costs of providing LNP in the Coon Rapids complex, and the revenues available from the SPNP fee and sale of advanced services for a period of five years, Iowa Telecom is left with a net shortfall of \$2,808. (Exhibits JPL-8 and 9). It should be noted that revenues for sale of advanced services will continue beyond the five-year period used by Iowa Telecom in its calculations. Iowa Telecom witness Mr. Larsen admitted that this amount of money was not unduly economically burdensome, although he also testified that this amount does not reflect the full economic impact on the company, that is, \$43,528. (Tr. 226, 230). Even if the \$43,528 figure is considered, without financial data to the contrary, it is difficult to believe that this amount represents an unduly economically burdensome requirement for a telephone company with approximately 294 telephone exchanges in Iowa. (Exhibit 220). In addition, even if Iowa Telecom chooses not to assess the SPNP fee, it will still have revenue from the sale of advanced services of \$19,250 for the first five years, and this revenue will continue beyond the five-year period. This leaves a shortfall of \$24,278. As LTDS points out, any expenditure of money will be somewhat economically burdensome. However, the statute requires that Iowa Telecom prove there is an undue economic burden before a suspension or modification is allowed. It has not done so.

After considering the total direct and indirect costs in the Hartley complex, and the five-year estimated SPNP revenues available, Iowa Telecom will be left with a shortfall of \$64,262. (Exhibits JPL-8 and 9). Even if the entire amount of \$147,850 is considered, without financial data to the contrary, it is also difficult to believe that this amount represents an unduly economically burdensome requirement for a company the size of Iowa Telecom, particularly if the company is given a reasonable time to comply, as discussed below.

Iowa Telecom witness Mr. Larsen testified that the \$43,528 cost and the \$147,850 cost for the Hartley complex represent an undue burden because the money is not within the budget today, and it is money Iowa Telecom would have to spend today and divert from other projects it considers more worthwhile. (Tr. 227, 230-32). He testified the company does not have an allocation in its budget for LNP or the discretionary capital available to do the implementation. (Tr. 230). His position is that any request for LNP would be an undue economic burden on the budget. (Tr. 230-32). Mr. Larsen also testified Iowa Telecom is not in "financial distress," depending on how you define "financial distress." (Tr. 232).

Iowa Telecom witness Mr. Kilburg testified that the current 2003 capital budget does not include any dollars for discretionary capital projects, and there is no funding for major switching upgrades. (Tr. 252). He testified the "status of the current budget requires Iowa Telecom to carefully analyze and challenge, both internally and externally, the proposed use of each dollar of capital by the Company." (Tr. 252).

He testified his concern was that Iowa Telecom will be making significant investments in these exchanges, using scarce capital resources, that will be stranded as the company proceeds with its network improvement plan. (Tr. 254-5). He testified the LNP requests present an economic burden to the company and its customers. (Tr. 255)

Although Iowa Telecom's witnesses testified that the LNP costs would be an economic burden, Iowa Telecom presented no financial data to support these statements. The fact that LNP costs are not currently in the budget does not mean that they present an undue economic hardship for Iowa Telecom. Iowa Telecom argues in its Reply Brief at page 9 that LTDS's references to its rate case make it clear its arguments of financial burden are credible, and that the limited ability of Iowa Telecom to make capital investments is not really an issue. Again, there is no financial data to support these general statements. Iowa Telecom's own witness testified the company was not in financial distress. (Tr. 232). Even if the company's financial situation is not ideal, as suggested by Iowa Telecom in these general statements in its brief, this does not support a finding that Iowa Telecom could not adjust its capital budget in this or future years to include the relatively small amounts required to provide LNP in the Coon Rapids and Hartley complexes. In addition, as the Board noted in its decision in Docket No. RPU-02-4, Iowa Telecom presented no evidence that it sought additional common equity financing from its investors. (Final Decision and Order, p. 36). It has also decided not to charge its customers the

SPNP fee, although that revenue is available if Iowa Telecom chooses. Customers of Iowa Telecom's competitors should not have LNP denied them because Iowa Telecom chooses not to collect the SPNP fee and has not included the costs of LNP implementation in its budget.

The only financially related data in the record is that provided by the municipals. In response to a municipal data request, Iowa Telecom stated that the cost to provide LNP in Coon Rapids represented 0.09 percent of its total operating costs for the last fiscal year, and that this percentage was based on the original cost estimate of \$115,000. (Tr. 67; Exhibit 210). In response to a data request, Iowa Telecom stated that the cost to provide LNP in the TCA exchanges represented 0.12 percent of its total operating cost for the past year, and this percentage was also based on the original cost estimate. (Tr. 88; Exhibit 217). Iowa Telecom argues that although this is true, it is irrelevant, because the expenses of the company are already committed to its operations and the LNP costs must come from additional revenues or at the expense of some other project. (Iowa Telecom Reply Brief, p. 7).

It is difficult to form any judgment based on this limited information. On the one hand, Iowa Telecom did not present any evidence of what other projects it would have to defer, or evidence regarding its ability or inability to make adjustments to the items in the existing budget. On the other hand, the information does not necessarily provide a clear image of the financial impact to the company. The municipals are comparing the cost in one exchange with the total operating budget for one year.

They do not add the amounts for both municipals together. There are 268 exchanges that do not have LNP capability. (Exhibit 220). From the record in this case, it is unknown how many of these have a CLEC that has requested LNP and the cost of LNP implementation in each exchange. If each of the exchanges in which a CLEC has requested LNP were upgraded to include LNP in the same year, this would be a much larger percentage of the total operating budget. In addition, there is no evidence regarding the nature of the expenses that comprise the operating budget to determine how much flexibility exists. Therefore, this information, although it provides some idea of the overall size of Iowa Telecom's operating budget for the last fiscal year, is not sufficient by itself to prove Iowa Telecom could adjust its budget to include LNP for the Coon Rapids and TCA exchanges.

Iowa Telecom's arguments that LNP is not important because of the small number of customers who have used INP in the Coon Rapids exchange is not persuasive. LNP may not be important from Iowa Telecom's perspective, but it is very important from CRMCU's and TCA's perspective. Provision of LNP is a forward-looking requirement. There is no way ahead of time to determine the number of customers who will use it. There is no requirement in the statute that a certain number of customers must have used INP before a company must provide LNP. The fact that CRMCU and TCA previously had a business plan that included requiring customers to switch their telephone numbers does not lessen the importance of LNP to the two municipals. Iowa Telecom's argument that LNP is not important because

of the availability of INP is not persuasive. As discussed above, INP is not an adequate substitute for LNP for a number of reasons. In addition, it must be remembered that INP is not currently available in the Hartley exchanges. Iowa Telecom's advertising campaign, whether directed at TCA's business strategy or not, further shows there is a need for number portability in these exchanges so customers can easily change telephone companies if they wish.

Iowa Telecom argues that providing LNP to Coon Rapids and Hartley would be economically burdensome because its investment would be wasted, since it plans to provide LNP through its statewide network improvement plan. This argument will be discussed more fully below. It is more relevant to the public interest prong of the test, and does not show that the investment would be unduly economically burdensome to Iowa Telecom, particularly when Iowa Telecom provides no timeframe in which the municipals may be assured of LNP implementation through the network improvement plan.

IV. Whether granting the petitions is consistent with the public interest, convenience, and necessity.

Iowa Telecom argues that it is not in the public interest to require it to provide LNP in the Coon Rapids and Hartley complexes at this time, because it will provide LNP on a statewide basis through its network improvement plan at a much cheaper cost, and the investment in the Coon Rapids and Hartley switches will be wasted, because it has no plans to reuse those switches elsewhere in the state. (Tr. 227-29, 251, 253-55; Iowa Telecom Post Hearing Brief, p. 12). It argues that retention of the

customer's telephone number is the principal benefit of LNP, and this is available through INP, functionality of CLASS services has nothing to do with the ability to retain a telephone number, telephone calls go over multiple service provider's networks regardless of whether the call comes through Iowa Telecom's facilities or not, its marketing strategy addressed TCA's marketing strategy that required customers to obtain new numbers, number conservation is not an issue in these two complexes, loss of revenues to the CLEC does not qualify for public interest consideration, and Iowa Telecom has complied with the law by filing these petitions. (Iowa Telecom Reply Brief, pp. 10-14).

The municipalities argue that competition and providing LNP is in the public interest, as shown by the statutes and regulations, that the long-term benefits outweigh the costs, that no particular percentage of customers that must request INP is required in order to justify the requirement to provide INP, that the FCC has rejected the argument that the SPNP fee will place Iowa Telecom at a competitive disadvantage, and that the statute does not provide for an indefinite suspension of the requirement to provide LNP. (CRM CU/TCA Post Hearing Brief, pp. 16-22, Reply Brief, pp. 3-4). LTDS argues that provision of LNP is in the public interest, Iowa Telecom has delayed compliance with the law and broken promises to provide LNP and has repeatedly shown it will require regulatory intervention to comply, has engaged in misleading and inappropriate advertising, and filed its petition without

seeking funding less harmful to competition first. (LTDS Initial Post-Hearing Brief, pp. 10-16).

Congress has determined that competition and number portability in conformance with FCC requirements are in the public interest. 47 U.S.C. §§ 153(30), 251(b)(2); Third Report and Order, ¶¶ 1–4. The FCC has determined that provision of number portability in compliance with certain performance criteria, including support of CLASS services and efficient use of numbering resources, is in the public interest. 47 C.F.R. § 52.23(a). Thus, requiring Iowa Telecom to implement LNP would be the norm and in the public interest.

However, Congress has also determined that it is in the public interest to allow smaller telephone companies who can prove they meet the requirements a delay to the extent and for such duration as necessary to avoid undue economic hardship, if the delay is in the public interest. 47 U.S.C. § 251(f)(2). However, the public interest requires that LNP be provided at some point. Allowing Iowa Telecom to delay implementation of LNP indefinitely would not be in the public interest.

Iowa Telecom recognized that suspension or modification of the LNP requirement in Coon Rapids and the TCA exchanges would not be permanent. (Iowa Telecom Post Hearing Brief, p. 13). If its requested rate increases in Docket No. RPU-02-4 are not granted, Iowa Telecom believes a suspension should last a minimum of five years, after which the parties could submit additional evidence on the situation. (Iowa Telecom Post Hearing Brief, p. 14). If it is granted rate relief,

Iowa Telecom requests a three-year suspension to allow it to coordinate LNP implementation with its network improvement plan. (Iowa Telecom Post Hearing Brief, p. 14).

Iowa Telecom's position that it would be in the public interest to allow it to provide LNP through an overall state plan that is more economical and would not waste resources is persuasive, if it can be shown that the state implementation plan will in fact provide LNP to the municipals in a reasonable period of time. Therefore, an analysis of the public interest part of the test involves a balancing of the competing public interests of the municipals and customers in Coon Rapids and the TCA exchanges in having LNP available, with the public interest of Iowa Telecom and its customers in providing LNP in the most economical way possible, without wasting money.

Unfortunately, without an order from the Board, Iowa Telecom would not commit to provision of LNP in the Coon Rapids and Hartley complexes within any specified period of time. (Tr. 260-61). Mr. Kilburg testified that implementation of Iowa Telecom's network improvement plan is dependant on available capital, which is dependant on the Board's decision on reconsideration of its decision in Docket No. RPU-02-4. (Tr. 252, 254, 261). In the network improvement plan as it currently exists, the Coon Rapids and Hartley complexes are in approximately the middle of the plan, although Mr. Kilburg testified the plan could be adjusted to move them up in the schedule so the work could be completed sooner. (Tr. 262; Exhibit 4).

Mr. Kilburg testified that if the Board does not change its decision in Docket No. RPU-02-4, he could not give any timeframe for implementation of LNP in the municipal exchanges. (Tr. 262-63). Even if Iowa Telecom received a favorable outcome in Docket No. RPU-02-4, it would not implement its network improvement plan in 2003, and it is unlikely it would in 2004. (Tr. 462). Without an order from the Board, regardless of the Board's decision in Docket No. RPU-02-4, Iowa Telecom would not implement LNP in the municipal exchanges in 2003 or 2004, and Mr. Kilburg would not provide an answer with respect to 2005. (Tr. 462-63). Mr. Kilburg further testified that if Iowa Telecom is granted its rate increase as requested in Docket No. RPU-02-4, Iowa Telecom could change the priorities in its network improvement plan and provide LNP to the municipals in 2004. (Tr. 464). If the priorities were not changed, it would probably be six to seven years before the municipals could expect LNP under the network improvement plan, assuming Iowa Telecom was granted its rate increase. (Tr. 464-65).

Thus it appears that without a specific Board order, Iowa Telecom's timeframes in the network improvement plan do not represent a reasonable or fair balancing of the competing public interests of the parties and their customers.

Determining an appropriate timeframe depends on the specific circumstances of each complex. Coon Rapids has had INP available for several years. Although it has been able to compete successfully, there are some customers who will not consider CRMCU without LNP availability. CLASS services are not available due

primarily to the lack of SS7 capability in the Iowa Telecom Coon Rapids switch. The total cost of providing LNP is \$43,528, of which \$19,250 will be able to be recovered in the sale of advanced services for the first five years. If Iowa Telecom chose to charge the SPNP fee, the net unrecoverable amount to Iowa Telecom is only \$2,808. In Coon Rapids, the public interest is squarely on the side of requiring Iowa Telecom to provide LNP as soon as possible as requested by CRMCU.

The Hartley Complex presents a closer case. INP has not been available in the TCA exchanges, and CLASS services are available due to the Iowa Telecom switch being SS7-capable, so it is less clear that INP will not provide an acceptable substitute for a short period of time. In addition, the cost to Iowa Telecom is \$147,850. If the SPNP fee were charged, Iowa Telecom's shortfall would be \$64,262. Although the public interest is clearly that Iowa Telecom provide LNP at some point, allowing Iowa Telecom a reasonable period of time to adjust its budget and plan for LNP implementation in the TCA exchanges is also in the public interest. However, this finding depends on the immediate availability of INP in the TCA exchanges. Therefore, Iowa Telecom must provide INP immediately, and will be allowed a period of 18 months from the date of the issuance of this order to complete LNP implementation in the TCA exchanges.

Iowa Telecom is currently providing INP to Coon Rapids at no charge, concedes that terms and conditions of approved interconnection agreements are available to TCA if it chooses to opt in, and agreed that it would provide INP to TCA

and CRMCU at no charge. (Tr. 157-58). Therefore, until LNP is implemented, Iowa Telecom must provide INP to CRMCU and TCA at no charge.

Appropriate sharing of access revenues until LNP is provided is more difficult. This is the issue over which negotiations between Iowa Telecom and TCA broke down. Board rule 199 IAC 38.2 provides a method of sharing intrastate access revenues, but does not address interstate revenues. The GTE/AT&T interconnection agreement determines sharing by measuring traffic. (Tr. 156). In this case, Iowa Telecom and TCA appear to be unable to successfully negotiate this issue, so a flat rate sharing of intrastate and interstate access revenues may be more successful.

Under the CRMCU/Iowa Telecom interconnection agreement, Iowa Telecom pays CRMCU a flat monthly rate of \$18.23 per business line and \$9.01 per residential line. CRMCU witness Mr. Honold testified that although this amount is adequate for certain residential and small business lines, it would not be for a large business customer with many lines and high traffic volume. (Tr. 353).

During negotiations, Iowa Telecom offered TCA flat rate sharing of \$7.01 for each business line and \$4.66 for each residential line. (JPL-6 and JPL-7, p. F-2). Mr. Larsen testified that very rough calculations of TCA's access were \$12-14 for business lines and \$8.00 for residential lines. (Tr. 472). He testified that the amounts Iowa Telecom pays to CRMCU for shared access would probably be to Iowa Telecom's disadvantage, because he does not believe average access

collected on the TCA lines comes close to those amounts on a per line per month basis. (Tr. 471-72).

TCA stated that a fair amount for access would be \$25 per month. (Tr. 327-28). The \$25 amount proposed by TCA lacks adequate substantiation in the record. The amount makes no distinction between residential and business customers, and it appears to be a simple blend. (Tr. 328). Iowa Telecom raised valid concerns that the \$25 amount represents average per month customer revenue, or customer long distance revenue, rather than access revenue, which would be less. (Tr. 470).

The record supports an alternative that strikes a balance between Iowa Telecom's position of \$12-14 for business lines and \$8 for residential lines and TCA's \$25 blend. The monthly rates of \$18.23 per business line and \$9.01 per residential line paid to CRMCU are a reasonable compromise. Therefore, until Iowa Telecom provides LNP to CRMCU and TCA, it must pay the municipalities a monthly rate of \$18.23 per business line and \$9.01 per residential line for shared access.

Iowa Telecom and TCA must execute an amendment to their interconnection agreement that incorporates these terms for INP and file it with the Board within 30 days of the issuance of this order.

FINDINGS OF FACT

1. Iowa Telecom owns less than two percent of the nation's subscriber lines.

2. Although INP allows the customer to retain its telephone number for incoming calls, which is one of the major functions of LNP, INP is not an adequate long-term solution or substitute for LNP. This is particularly true in the Coon Rapids exchange where the lack of SS7-capability in the Iowa Telecom switch means that CLASS services are not available.

3. Iowa Telecom has not proven that provision of LNP in the Coon Rapids exchange would be unduly economically burdensome.

4. Iowa Telecom has not proven that provision of LNP in the TCA exchanges would be unduly economically burdensome if it is allowed a reasonable period of time to comply.

5. It is consistent with the public interest to require Iowa Telecom to provide LNP in the Coon Rapids exchange.

6. It is consistent with the public interest to require Iowa Telecom to provide LNP in the TCA exchanges.

7. It is consistent with the public interest to allow Iowa Telecom 18 months from the date of issuance of this decision to implement LNP in the TCA exchanges if INP is made available immediately

CONCLUSIONS OF LAW

1. The Telecommunications Act at 47 U.S.C. § 251(b)(2) provides that each local exchange carrier (LEC) has the duty to provide number portability in

accordance with the requirements prescribed by the Federal Communications Commission (FCC), to the extent technically feasible.

2. Number portability is defined as the ability of telephone customers to retain, at the same location, their existing telephone numbers "without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." 47 U.S.C. § 153 (30).

3. 47 U.S.C. § 251(f)(2) provides that a local exchange carrier with fewer than 2 percent of the nation's subscriber lines may petition a state commission for a suspension or modification of the requirement to provide number portability under section 251(b)(2). Section 251(f)(2) further provides that the state commission shall grant such petition to the extent that, and for such duration as, it determines that the suspension or modification: (a) is necessary to avoid imposing a requirement that is unduly economically burdensome; and (b) is consistent with the public interest, convenience, and necessity.

4. The FCC promulgated number portability rules at 47 C.F.R. §§ 52.20 – 52.33. The FCC rules distinguish between a long-term database method for number portability, which must meet certain performance criteria, and transitional number portability, which does not. 47 C.F.R. § 52.21. Transitional number portability methods include remote call forwarding. 47 C.F.R. § 52.21(q).

5. 47 C.F.R. § 52.23(a) provides that, subject to paragraphs (b) and (c), all LECs must provide number portability in compliance with the listed performance

criteria. The performance criteria include, among other things: a) support of network services, features, and capabilities existing at the time number portability is implemented, including CLASS features; b) efficient use of numbering resources; and c) not requiring end users to change their telephone numbers.

6. 47 C.F.R. 52.23(b) essentially requires LECs to provide a long-term database method for number portability in the 100 largest Metropolitan Statistical Areas (MSAs) by December 31, 1998. None of the areas at issue in this case are within the 100 largest MSAs.

7. 47 C.F.R. 52.23(c) requires all LECs, beginning January 1, 1999, to make a long-term database method for number portability available within six months after a specific request by another telecommunications carrier in areas where that telecommunications carrier is operating or plans to operate.

IT IS THEREFORE ORDERED:

1. Until Iowa Telecom provides LNP to CRMCU and TCA, it must provide INP to CRMCU and TCA at no charge. Until it provides LNP, Iowa Telecom must share access fees with CRMCU and TCA by paying them a flat monthly rate of \$18.23 per business line and \$9.01 per residential line. This requirement is effective upon issuance of this proposed decision and order.

2. Iowa Telecom and TCA must execute an amendment to their interconnection agreement that incorporates these terms for INP and file it with the Board within 30 days of the issuance of this order.

3. Iowa Telecom must provide LNP to the Coon Rapids exchange as soon as possible, and no later than four months from the date of issuance of this proposed decision and order.

4. In the Hartley, Primghar, and Paullina exchanges, Iowa Telecom must provide INP beginning immediately in accordance with the terms set forth in this order, and must provide LNP within 18 months of the issuance of this proposed decision and order.

5. Arguments of the parties not addressed specifically in this order are rejected, either as not supported by the evidence, as not persuasive, or as not of sufficient importance to the decision in this case to warrant discussion.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

Dated at Des Moines, Iowa, this 15th day of April, 2003.